



This Legal Alert contains general advice and you should seek legal counsel regarding your specific circumstances. Also, the guidance provided below is the law as of April 22, 2020. In these uncertain times, the laws and regulations are constantly changing.

Ongoing COVID-19 Issues for Nonprofit Employers to Consider

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By now, most nonprofit employers have taken a variety of steps to address the COVID-19 pandemic, including, for example, furloughs, pay cuts, telework arrangements and outright closures. Talk has now turned to restarting the economy and returning to some semblance of normal life. As we enter this next phase of an unprecedented situation, nonprofit employers should consider several issues. The following list is by no means exhaustive but touches on some of the key concerns for employers.

Wage and Hour Issues

Many nonprofit employers have permitted non-exempt employees to telework for the first time. In many cases, this has been limited by the fact that business has slowed significantly and overtime has not been an issue. As nonprofits prepare to reopen, these employees may have more work to do from home and managers will have to be vigilant in managing overtime and clear in their directions to employees. Under federal law, non-exempt employees must be paid for all hours worked and must receive premium pay for hours over 40 in any workweek. Even unauthorized hours must be paid, with the issue of the unauthorized work time addressed separately. Moreover, once business resumes, employers will have to reset rules and expectations regarding telework.

Returning Employees to Work

Unfortunately, restarting the economy is probably not as simple as flipping on a switch. The same goes for restarting business operations. It is unlikely that nonprofits will call back all of their employees at the same time and some jobs may simply be eliminated. The program staff of ten that was in place at the beginning of the year may only be a program staff of seven or eight going forward. The decision of who returns and when will have to be considered carefully by employers as it may be the basis for a variety of discrimination claims. Similarly, employees who have utilized the new paid sick leave available under the FFCRA are protected from retaliation and may have claims based on decisions related to returning to work. Along the same lines, employers should be particularly vigilant in preventing harassment and discrimination against Asian-American employees.



WARN Issues

Most employers did not issue WARN notices for furloughs on the basis that the anticipated layoff would be less than six months. Some nonprofits may determine that certain closures or furloughs may become permanent or extend beyond six months. In these cases, the issue of WARN notices needs to be re-examined.

Anticipating Litigation

A sudden increase in the unemployment rate may bring with it an upswing in litigation. Employers should anticipate an increase in employment litigation over the next several months. Every issue raised above could be the basis for a legal claim. As a result, nonprofit employers need to be mindful of their decision making processes and utilize objective criteria to the greatest extent possible. Employers should also take steps to thoroughly document the reasons for their decisions regarding employment matters and recognize that many of these decisions may be subject to close scrutiny in the future.

Need Legal Advice?

Obviously, there are many more issues that may come up in connection with nonprofit employers restarting their businesses. If you are a PBPO client and have questions regarding the content of this article or need legal assistance, please email us at info@pbpohio.org.

Not a client? Apply to become a client by submitting a [Request for Legal Assistance online](#), or contact us at info@pbpohio.org.

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